

**RESOLUTION OF THE
MONMOUTH COUNTY AGRICULTURE DEVELOPMENT BOARD
REGARDING SITE SPECIFIC AGRICULTURAL MANAGEMENT
PRACTICE DETERMINATION FOR BLOCK 742, LOT 21
IN THE TOWNSHIP OF WALL**

Ms. Butch offered the following resolution and moved its adoption:

WHEREAS, Barnegat Oyster Holdings, LLC ["Applicant"] is a tenant of Michael Brookes, Owner, of Block 742, Lot 21 (1859 New Bedford Road) in the Township of Wall; and

WHEREAS, on February 8, 2021, the Applicant applied for a Site Specific Agricultural Management Practice ("SSAMP") recommendation for Block 742 Lot 21 in the Township of Wall that included a request for protection for an on-farm direct marketing facility on the site, together with the right to conduct operations including production, packaging, storage, and wholesale sales; and

WHEREAS, the Applicant requested relief from the Resolution of the Board of Adjustment, Township of Wall dated February 5, 1992 which required that the type of farm products at the farm located within Wall and outside the township would be limited to the types of products that Applicant raised on their farm; and

WHEREAS, aquaculture is an acceptable form of agriculture in New Jersey per N.J.A.C. 17.12-1.12; and

WHEREAS, in Twp. of Franklin v. den Hollander, 172 N.J. 147 (2002), standards had been set allowing the protection given under the Right to Farm Act to trump municipal land use law when appropriate. As per the Court, when exercising primary jurisdiction, the County Agriculture Development Board ("CADB") must first determine whether the Applicant's activities fall within the purview of agricultural management practices. Once established and, upon assuming jurisdiction, the CADB, where appropriate, must consider not only the impact of such practices on the municipality, but the standards established by local ordinances, all within the scope of the CADB's statutory obligation to consider public health and safety. If the CADB determines that the proposed activity falls within the scope of agricultural management practices, it may override the local ordinance; and

WHEREAS, N.J.S.A. 4:1C-1 et seq. is known as the Right to Farm Act; and

WHEREAS, N.J.A.C. 2:76-2.1 et seq. details the State Agriculture Development Committee's ("Committee") rules; and

WHEREAS, N.J.A.C. 2:76-2A.11 outlines the adopted AMP for Aquaculture and incorporates the publication "Recommended Management Practices for Aquatic Farms;" and

WHEREAS, N.J.A.C. 2:76-2A.13 details the adopted AMP for On-Farm Direct Marketing Facilities, Activities, and Events; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.3(b), the Board advised the Committee and the Township of Wall of the application request; and

WHEREAS, the Applicant is engaged in the aquaculture production of oysters and other shellfish; and

WHEREAS, the MCADB conducted a site visit to view the subject property and the proposed operation prior to scheduling a public hearing on the matter. The site visit was held on August 10, 2021 and attended by a minority of Board members, MCADB staff, and the Applicant; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.3 (c), (d), upon receipt of a request for an SSAMP, the Board must determine whether the Applicant's agricultural operation is a commercial farm as defined by N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3; and

WHEREAS, on September 8, 2021, after deliberation at the public hearing, the MCADB found that the Applicant's operation is a "commercial farm" as defined by the Right to Farm Act, set forth in N.J.A.C. 2:76-2.1, N.J.S.A. 4:1C-3, and N.J.A.C. 17:12-1.12 and herewith memorializes its findings; and

WHEREAS, the Applicant now requests approval for an SSAMP determination from the Board for certain operations on the farm; and

WHEREAS, notice of the request and public hearing for the SSAMP was provided pursuant to N.J.A.C. 2:76-2.3(b) and 2:76-2.8(c); and

WHEREAS, the following documents comprise a list of exhibits and materials submitted for the Board's consideration:

Applicant's Exhibits:

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| Request for Right to Farm Site Specific Agriculture Management Practice Recommendation; Submitted February 8, 2021 | A-1 |
| Farmland Assessment Form Tax year 2021 | A-2 |
| Barnegat Oyster Collective Sales by Product/Service Summary January - December 2020..... | A-3 |
| Wall Site Use Map | A-4 |
| Lease Site Maps | A-5 |
| Matthew Gregg Lease | A-6 |
| Scott Lennox Lease | A-7 |
| Barnegat Oyster Collective Property Lease | A-8 |
| E-mail from Scott Lennox to Harriet Honigfeld Dated April 19, 2021 | A-9a |
| Operating Agreement for Barnegat Oyster Holdings, LLC | A-9b |
| Sales Transactions Off the Hook Seafood-Midland Park | A-9c |
| NJ Dept. of Health Sanitary Inspection Report | A-9d |

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| Retail Food Handling License | A-9c |
| E-mail from Scott Lennox to Harriet Honigfeld Dated May 4, 2021 | A-10 |
| E-mail from Scott Lennox to Harriet Honigfeld Dated May 18, 2021 | A-11 |
| Barnegat Oyster Holdings LLC njportal.com Status Report..... | A-11a |
| Shellfish Lease Extension Agreement Dated December 26, 2020..... | A-11b |
| The Bonney Read Sales for January to December 2020 | A-12 |
| July 23, 2021 E-mail from Scott Lennox to Harriet Honigfeld re: Business Model..... | A-13 |
| Proposed Retail Market Floor Plan | A-14 |
| Bay Point Engineering Associates, Inc. Letter to the Board of Adjustment Dated January 6, 1992..... | A-15a |
| Conceptual Parking Plan prepared by John Lawrence P.E. Dated October 14, 1991..... | A-15b |
| February 5, 1992 Board of Adjustment Township of Wall Resolution | A-16 |
| Revised Notarized Commercial Farm Certification Form | A-17 |
| Floor Plan of Entire Farm Market Building..... | A-18 |

Exhibits from the Monmouth CADB:

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| Aerial Map for Block 742 Lot 21 | B-1a |
| Close up Aerial for Current Processing and Proposed Retail Facility..... | B-1b |
| Wall Tax Map Sheet 77..... | B-2 |
| Wall Township Interactive Zoning Map | B-3a |
| Township of Wall Schedule of Permitted and Conditional Uses for Residential Zone Districts..... | B-3b |
| Section 105-1 Wall Township Right to Farm Code | B-3c |
| Don Vona Final Decision December 2020 | B-4 |
| On-farm Direct Marketing AMP | B-5 |
| April 19, 2021 Letter from Harriet Honigfeld to Scott Lennox and Matthew Gregg | B-6 |
| Select Site Visit Photos from August 10, 2021 | B-7 |
| E-mail Conversation with Virginia Wheatley of NJDOH | B-8 |
| Douglas Zemeckis E-mail Dated August 14, 2021 | B-9 |
| Aquaculture AMP | B-10 |
| Recommended Management Practices for Aquatic Farms | B-11 |

Exhibits from the Public and Municipality:

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| September 7, 2021 Letter from Peter Furey, NJ Farm Bureau | P-1 |
| September 8, 2021 E-mail from Nora Coyne to Sean Pizzio and Harriet Honigfeld | P-2a |
| June 7, 1991 Letter from John Hoffman to Joyce Walton and George Geiser | P-2b |
| February 5, 1992 Board of Adjustment Township of Wall Resolution (complete text) | P-2c |

WHEREAS, the MCADB heard testimony, reviewed submissions and exhibits, and considered the Applicant's request during the Board's public meetings on September 8, 2021 and on October 5, 2021; and

WHEREAS, the Applicant was represented by its sole Member, Scott Lennox, who offered his own testimony in support of the application; and

WHEREAS, the Board carefully considered the testimony of the Applicant and witnesses in making its determination; and

WHEREAS, after considering the testimony given and the exhibits presented at the hearing, the Board makes the following findings of fact:

1. Block 742, Lot 21 in the Township of Wall includes the block building where the Applicant's on-farm direct marketing is proposed to occur, along with the Applicant's current operations which include production, packaging, storage, and wholesale sales is approximately 6.16 acres in size.
2. The property is located within the RR-6 Rural Residential Zone that permits agriculture.
3. The Applicant is currently engaged in aquaculture operations for shellfish including production, packaging, storage and wholesale sales, and the sale of ancillary items such as oyster knives, plates, sauces, etc.
4. The Applicant currently has several leases in Barnegat Bay from the State of New Jersey as Lessee, for the cultivation of shellfish, consisting of 11.8 acres, 8 acres and 7.83 acres (totaling in excess of 27 acres).
5. The SSAMP request relates to a set of permissible activities listed in N.J.S.A. 4:1C-9, primarily:
 - a. Provide for the operation of a retail farm market in the RR-6 Zone;
 - b. Allow for adequate on-site parking per the Applicant's Exhibit A-15b; and
 - c. Allow for approximately 625 square feet of the front part of the block building to be used for Applicant's retail sales (approximately 25 feet x 25 feet), with the remainder of the block building to be used for the balance of the Applicant's operations; and
 - d. Establish a sales threshold in line with the On-farm Direct Marketing AMP so that at least 51% of the annual gross sales of the Applicant's combined retail and wholesale sales are from the Applicant's shellfish harvest and not from other shellfish harvesters and/or growers from which the Applicant purchases other shellfish.

NOW, THEREFORE, BE IT RESOLVED, based on exhibits presented, testimony given and the aforesaid findings of fact, that the Monmouth County Agriculture Development Board makes the following determinations:

1. Retail markets are permissible activities on commercial farms as per the On-Farm Direct Marketing AMP [N.J.A.C. 2:76-2a.13]; therefore, the proposed retail market is permissible on the subject within the RR-6 Zone.
2. The Applicant may use 625 square feet (an area of approximately 25 feet x 25 feet) of the existing block building on Block 742, Lot 21 (1859 New Bedford Road, Wall Township, New Jersey) for retail sales (On-farm Direct Marketing) with the remainder of the block building to be used for the remainder of Applicant's aquaculture operations including production, packaging, storage, and wholesale sales. The

Applicant may also maintain the exterior cooler/refrigerator which is approximately 64 square feet and measures approximately 8 feet x 8 feet.

3. The Applicant may operate its retail sales seven (7) days per week from 8 a.m. to 7 p.m. and may operate its wholesale sales five (5) days per week (Monday to Friday, inclusive) during those hours. Applicant's other aquaculture operations may operate seven (7) days per week from the hours of 6 a.m. to 10 p.m.
4. The Applicant shall make all site improvements and provide on-site parking in accordance with Exhibit A-15 b subject to obtaining any applicable building permits from the Township of Wall.

The Applicant shall continue to be responsible for maintaining New Jersey Department of Health licenses and standards, together with approval from the Wall Township Board of Health and any other regulatory agency, including but not limited to the New Jersey Department of Agriculture, the New Jersey Department of Environmental Protection, and the Freehold Soil Conservation District.

5. A facility may include one or more structures or a portion of a structure, and a facility may utilize new or existing structures. A facility's structures may also be used for the commercial farm's other farm purpose, for instance: equipment storage, equipment maintenance, and the production, processing, packaging, storage, or wholesale marketing of the agricultural output of the commercial farm.
6. The Board approved a sales threshold in line with the On-farm Direct Marketing AMP so that least 51% of the annual gross sales of the Applicant's combined retail and wholesale sales are from the Applicant's shellfish harvest within Wall Township and other sites outside Wall and not from other shellfish harvesters and/or growers farm which the Applicant purchases additional shellfish.

BE IT FURTHER RESOLVED that the activities on the farm must conform to all relevant Federal and State statutes, rules, and regulations, including, but not limited to the New Jersey Department of Agriculture, the New Jersey Department of Environmental Protection, New Jersey Department of Health, Wall Township Board of Health and Freehold Soil Conservation District; and

BE IT FURTHER RESOLVED that if over time the subject Farm substantially changes its operations to deviate from the provisions agreed upon in these resolutions, the Applicant, municipality, or any other aggrieved party would be entitled to return to the Board to request relief; and

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the Applicant through counsel, the State Agriculture Development Committee, the Township of Wall, and the Applicant.

BE IT FURTHER RESOLVED that any person aggrieved by this resolution may appeal to the SADC in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, within 45 days from the receipt of this resolution. The decision of the


SADC shall be considered a final administrative agency decision. If this resolution is not appealed within 45 days, this resolution is binding.

Seconded by Mr. Bullock and adopted on roll call by the following vote:

| | Yes | No | Abstain | Absent |
|--------------------|-----|----|---------|--------|
| Mr. Bullock | X | | | |
| Commissioner Burry | X | | | |
| Mr. Buscaglia | X | | | |
| Ms. Butch | X | | | |
| Mr. Clayton* | X | | | |
| Mr. DeFelice | X | | | |
| Mr. Giambrone | X | | | |
| Mr. Holmes | | | X | |
| Mr. Matthews | X | | | |
| Mr. Potter | X | | | |

* Alternate member in 2021

I do hereby certify that the foregoing is a true copy of a Resolution adopted on October 5, 2021 and memorialized by the Monmouth County Agriculture Development Board at a meeting on November 3, 2021.


 Gary DeFelice, Secretary